

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3916 of 1982

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

RAJNIKANT BADRINARAYAN DAVE & ANR.

Versus

GUJ. SECONDARY EDUCATION BOARD & OTHERS

Appearance:

MR KB PUJARA for the Petitioners
None present for Respondent No. 1
None present for Respondent No. 2
MS MAMTA R VYAS for Respondent No. 3

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 04/10/96

C.A.V. JUDGEMENT

1. The petitioners, the employees of the Gujarat Secondary Education Board in the clerical cadre filed this writ petition before this Court challenging thereunder the order of the respondents no.1 and 2, annexure 'G' under which the respondent no.3 was declared to be senior to the petitioners in the clerical cadre.

The facts which are not in dispute are as follows:

The petitioners no.1 and 2 were appointed as Jr. clerk on 30-6-1965 and 3-5-1963 respectively in the office of the Director of Education Department, Government of Gujarat. The respondent no.3 was appointed on the post of Jr. clerk on 1-11-1961 in the erstwhile Gujarat Secondary School Certificate Examination Board. It is not in dispute that the aforesaid Board was constituted under the provisions of the Bombay Secondary School Certificate Examination Act, 1948. The petitioners were promoted to the post of Sr. clerk on 1-12-1971 and 28-12-1971 respectively in their parent department. The Gujarat Secondary Education Act, 1972 was enacted in the State of Gujarat. Under sec. 57 of the said Act, on the date and with effect from the date on which the Gujarat Secondary Education Board is constituted under sec. 3 of the said Act, the Bombay Secondary School Certificate Examination Act, 1948 shall stand repealed and the Gujarat Secondary School Certificate Examination Board shall stand dissolved. There is no dispute between the parties that on constitution of Gujarat Secondary Education Board under Gujarat Secondary Education Act, 1972 (hereinafter referred to as the Act, 1972), the petitioners no.1 and 2 came to the Board on transfer whereas the respondent no.3 has become its employee on absorption. The respondent no.3 was promoted to the post of Sr. clerk on 9-10-1972. The petitioners were absorbed in the Board services and they have given option for its services and the respondent no.3 has also been absorbed. In the seniority list, which has been published from time to time by the Board, the petitioners were shown senior to the respondent no.3. A reference in this respect may have to the documents which have been filed by the petitioners along with this Special Civil Application at annexure 'B' page no.20 and annexure 'D' page no.28. It is necessary to mention here that both these documents annexure 'B' and 'D' are tentative seniority list of the staff of General section of Gujarat Secondary Education Board and the respondent no.3 has been placed junior to the petitioners. The respondent no.3 made a representation to the State Government, as it is borne out from the document filed by the respondent alongwith the reply at Page no.49 in connection with his seniority. It appears that the respondent no.3 lodged a claim of his seniority above the petitioners on the ground that he was a person who entered into the services much earlier than these two persons in the erstwhile dissolved Board. The claim lodged by the respondent no.3 regarding his seniority found favour with the respondent State and the State

passed thereupon the order annexure 'G' impugned in this writ petition.

2. The reply to the writ petition has been filed by the Board. The respondent no.3 has also filed reply to this writ petition.

3. The learned counsel for the petitioner contended that the petitioners come to the Board as Sr. clerk and they have been absorbed as Sr. clerk in the Board and as such, the seniority has to be determined of the petitioners and respondent no.3 taking into consideration the date of their appointments by promotion on the post of Sr. clerk. It has next been contended that the seniority which has been determined now by the Government on the basis of the date of the entry into the services is highly arbitrary and unjustified. The counsel for the petitioner contended that the petitioners have given the option for their absorption only when they have been assured that their seniority is to be maintained in the cadre of Sr. clerk from the date of their promotion thereon. It is a case of integration of different employees but they came from different sources, and as such, the seniority should have been given with reference to the date on which those persons have been appointed on the post of Sr. clerk. Reliance is placed by the petitioner in support of his contentions to the decision of the Supreme Court in the case of Jagtarsingh vs. State of Punjab reported in AIR 1972 SC 586 and in the case of Jogindernath vs. Union of India reported in AIR 1975 SC 511. Lastly the counsel for the petitioner contended that the respondent no.3 has not objected against the placement of the petitioners senior to him at any point of time against the seniority list annexure 'B' and 'D'.

4. On the other hand, Ms. Mamta Vyas, the counsel for the respondent no.3 contended that under sec. 22 of the Act, 1972 the State government was the only authority competent to lay down the salaries, allowances and other service conditions of the employees of the Board. The placement of the petitioners in the tentative seniority list above the respondent no.3 is of no significance. It was only the tentative decision of the Board and not the State Govt. The respondent no.3 made a representation against those seniority lists to the Government on which a decision has been taken to assign him the seniority above the petitioners. By making the reference to clause G of Sub-section 2 of sec. 57 of the Act, 1972, Ms. Mamta Vyas contends that all Officers and servants of the State Government serving under the dissolved Board

immediately before the said date may from the said date be taken over and employed by the Board for the purposes of this act and they shall subject to such general or special orders as may be made by the State Government regarding their absorption and seniority continue to hold office on the same conditions of service as the changed circumstances may permit until such conditions are duly altered under this Act. The respondent no.3 was appointed as an employee of the dissolved Board and on dissolution of the same he became an employee of this Board. The claim of the petitioners of the seniority on the basis of their earlier promotion to the post of Sr. clerk, the counsel for the respondent no.3 Ms. Vyas contended that it is a fortuitous circumstances. The petitioners in the parent department got the promotion because of the availability of the promotional post, but in the dissolved Board there was no sufficient number of promotional posts, and as such, the respondent no.3 would not have got the promotion earlier though he entered in the service as Jr. clerk earlier to the petitioners. Only on this fortuitous circumstances, the petitioner could not have been given the benefit of seniority above the respondent no.3 who is senior to the petitioners in entry in the service. Replying to the contention of the counsel for the petitioner that the petitioners have opted for the service of the Board as they have been given assurance that their seniority shall be maintained, she contended that it is not correct, no material has been produced on the record whatsoever by the petitioners to show that such an assurance has been given by the Board. Carrying further this contention Ms. Vyas urged that from the document annexure 'C' under which the options were called from the petitioners for absorption in the services of the Board, the reference to sec.22 of the Act, 1972 has also been mentioned, and the petitioners service condition has to be regulated as laid down by the State Government under sec. 22 of the Act, 1972. Ms. Vyas thus submitted that merely placement of the name of the petitioners above respondent no.3 in tentative seniority list by the Board does not give them any right. It was only a tentative decision which was subject to the correction, modification and alteration on an order made laying down the service conditions by the State Government under sec. 22 of the Act, 1972. Lastly it is contended by Ms. Vyas that the decision of the Government to give them seniority in the cadre of clerks with reference to the date of the initial entry in the service, is reasonable and fair decision. The State Government has taken this decision rightly otherwise, the persons who have opted for the Board service from different departments would have got the benefit of the

fortuitous circumstances over the employees of the erstwhile dissolved Board.

5. I have given my thoughtful consideration to the submissions made by the learned counsel for the parties. From the facts which have come on the record, it is no more in dispute that the respondent no.3 has started his service career though in the dissolved Board as Jr. clerk much earlier to the petitioners when they started their service careers on the post of Jr. clerk in the Education Department of the Government of Gujarat. Sec. 57 of the Act, 1972 gives out that the employees of the dissolved Board have to be taken in the service of the Board constituted under the Act, 1972 and it is also true that the other employees could have been taken, but the service conditions have to be laid down by the State Government under sec. 22 of the Act, 1972. The Board was not competent to lay down the seniority of the employees who have come in the service of the Board from different sources including the employees of the dissolved Board. That decision has to be taken by the Government and whatever position has been reflected from the tentative seniority list which has been published by the Board is of no significance. It is not a final decision. The Board has framed the tentative seniority list on the basis of the date of the appointment of the petitioners and the respondent no.3 on the post of senior clerk and not on the basis of the date of initial appointment of these persons. The respondent no.3 made a grievance against the action of the Board to assign the seniority lower to the petitioners though he was appointed as a Jr. clerk in the year 1961 in the dissolved Board. The seniority is a service condition which is not disputed by the counsel for the petitioners. Once the matter comes before the Government regarding laying down the service condition of the employees of the Board, it has to take a reasonable decision and the Government has decided that the seniority in the clerical cadre should be reckoned from the date of the entry and not with reference to the date on which the persons have been promoted to the next higher post. It is true that the petitioners were promoted earlier to the respondent no.3 on the post of Sr. clerk, but they have been given the promotion on the basis of their seniority in the Education department where the respondent no.3 was not there. The court cannot be oblivious of the fact that in case, the respondent no.3 would have been also in the Education department with the petitioners then certainly he would have been the person to get the promotion to the post of Sr. clerk earlier to them. The promotion of an employee on the next higher post depends on the

availability of the promotional posts as well as the position of the concerned employee in the seniority list. The Education department of the Government of Gujarat was a big department and looking to the availability of the post of Sr. clerk, the petitioners who have been appointed much after respondent no.3 got the promotions in their parent department. But if we consider this decision with reference to the case of respondent no.3, it is certainly a fortuitous circumstances. The dissolved Board was a small department and there may not be that much number of promotional posts available otherwise the respondent no.3 should have been certainly promoted earlier to the petitioners. Taking into consideration this fact, the State Government has not committed any error much less any illegality to decide to give the seniority to those class of persons with reference to their initial entry in the service. This decision is reasonable, fair and in consonance with the principles of fair play.

6. The other contention of the counsel for the petitioners that the petitioners have given the option as they have been given the assurance that the seniority on the basis of the date of appointment on the post of clerk will be maintained, is also devoid of any substance. The petitioners have failed to produce any material on the record that any such assurance was given to them by the Board. This contention cannot be accepted on another ground. The service conditions are to be laid down of the employees of the Board by the State Government under sec. 22 of the Act, 1972. The petitioners' counsel while making this submission altogether ignored the substance of the matter that in the letter of the Board calling the option from the petitioners, the reference has been made to the aforesaid provision. The State Government has to lay down the criteria for fixation of the seniority of the class of the employees who have come to the Board from different departments including the employees of the dissolved Board and as this power has been conferred upon it under sec. 22 of the Act, 1972, whatever decision is taken by the Board in respect of the seniority and the service conditions of the petitioners and respondent no.3 is not final, but it was a tentative decision subject to what the State Government says thereon and the State Government is the final authority in these matters. I find sufficient substance in the contention of the learned counsel for the respondent no.3 that merely placement of the name of the petitioners in the tentative seniority list by the Board will not give them any right or it is not a case where the seniority of petitioners and respondent no.3 is finalised by the

Government. As stated earlier, the decision of the Board to give the seniority to the petitioners above respondent no.3 was not accepted by the Government and it has rightly been not accepted as discussed and decided earlier.

7. Another contention of the counsel for the petitioner that the respondent no.3 has not made any grievance against the placement of the petitioners senior to him in the seniority list, again has no merits. From the document which has been filed by the respondent along with the reply, it is clearly borne out that the decision has been taken by the Government under sec. 22 of the Act, 1972 on the representation of the respondent no.3. He made representation rightly when he has been given the seniority lower than the petitioners. So far as the decisions cited by the learned counsel for the petitioners in support of his contention, it is suffice to say these are not applicable to the facts of the present case. Here is a case where the seniority is determined by the State Government under sec. 22 of the Act, 1972 and that decision has to be accepted by the petitioners. The petitioners have not challenged the validity of the provisions of sec. 22 of the Act, 1972. It is not a case of the appointment of the employees from different sources or recruitment, it is a case where the petitioner themselves have opted for the Board services and certainly subject to the condition that under sec. 22 of the Act, 1972, the State Government has power to lay down the service conditions. In view of this fact, the support taken by the petitioners on two decisions of the Supreme Court referred above, is of no help to them.

8. In the result, this writ petition fails and the same is dismissed. Rule discharged. Ad-interim relief, if any, granted by this Court stands vacated. No order as to costs.

zgs/-